

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

JEROME F. SAWYERS v. STATE OF TENNESSEE

**Appeal from the Criminal Court for Davidson County
No. 4035**

No. M2009-00544-CCA-R3-PC - Filed August 12, 2009

This matter is before the Court upon the State's motion to affirm the judgment of the post-conviction court by memorandum opinion pursuant to Rule 20, Rules of the Court of Criminal Appeals. Petitioner has appealed the post-conviction court's order summarily dismissing the petition for post-conviction relief. In that petition, Petitioner alleges that he was afforded ineffective assistance of counsel and his plea was not made intelligently, voluntarily and knowingly. Upon a review of the record in this case we are persuaded that the post-conviction court was correct in summarily dismissing the petition for post-conviction relief and that this case meets the criteria for affirmance pursuant to Rule 20, Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted, and the judgment of the post-conviction court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals**

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ. joined.

Jerome Sawyers, pro se.

Robert E. Cooper, Jr., Attorney General & Reporter; Lacy Elaine Wilber, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

According to Petitioner's pleadings, he pled nolo contendere to one count of assault on May 7, 1999. In its order, the post-conviction court noted that there was no appeal from this conviction. On November 3, 2008, Petitioner filed a pro se petition for post-conviction relief asserting that he was afforded ineffective assistance of counsel and his plea was not made intelligently, voluntarily and knowingly. On January 15, 2009, the post-conviction court dismissed the petition by written order. In its order, the post-conviction court stated that Petitioner filed his petition outside the statute of limitations and had not based his claim on an exception to the statute of limitations listed at

Tennessee Code Annotated section 40-30-102(b). Petitioner signed a notice of appeal on February 25, 2009. This notice was stamped filed on March 5, 2009.

Analysis

The State argues that Petitioner's appeal should be dismissed because his notice of appeal was not filed within thirty days of the order dismissing his petition. In the alternative, the State argues that the post-conviction court was correct in its dismissal based upon the statute of limitations.

The State argues that Petitioner's notice of appeal was filed outside the thirty days as required by Rule 4(a) of the Tennessee Rules of Appellate Procedure for the filing of a notice of appeal. Under Rule 20(g) of the Tennessee Rules of Appellate Procedure papers filed by a pro se litigant who is incarcerated in a correctional facility are considered timely "if the papers were delivered to the appropriate individual at the correctional facility within the time fixed for filing." In the case at hand, Petitioner's notice of appeal states that it was put in the mail on February 25. While this date is past the thirty days set out in Rule 4(a), we have decided to waive the timely filing as allowed by Rule 4(a).

We now address the State's contention that the petition for post-conviction relief was filed outside the statute of limitations. In its order, the post-conviction court stated that, "the petition was not filed within the applicable statute of limitations . . . and the petition alleges no ground which would waive the application of the statute limitations"

Since July 1, 1995, the statute of limitations for filing a petition for post-conviction relief has been one year from the date of the final action of the highest state appellate court to which an appeal is taken. T.C.A. § 40-30-202(a).

There are three statutory exceptions to the statute of limitations in post-conviction matters. These exceptions are set forth in Tennessee Code Annotated section 40-30-202(b)(1), (2) & (3):(1) claims based on an appellate court ruling concerning a constitutional right not recognized at the time of the trial and given retroactive effect by the appellate courts; (2) claims based upon newly discovered evidence which establishes that the petitioner is actually innocent of the crime; and (3) claims which arise out of a situation where the petitioner received an enhanced sentence for a crime based on previous convictions which were later held to be invalid. Petitioner has not alleged that any of these exceptions applies to his case. Thus, we agree with the post-conviction court that the petition is time-barred.

The Court finds that the instant petition was filed approximately nine and a half years after the final action of the highest state appellate court to which an appeal was taken. The Court finds that the petition is time-barred by the applicable one year statute of limitations, and fails to meet any of the statutorily recognized exceptions to the statute of limitations.

It is therefore the opinion of the Court, that the Petitioner's pro se petition for Post-Conviction Relief should be dismissed.

Conclusion

Rule 20, Rules of the Court of Criminal Appeals provides inter alia:

The Court, with the concurrence of all judges participating in the case, when an opinion would have no precedential value, may affirm the judgment or action of the trial court by memorandum opinion rather than by formal opinion, when:

The judgment is rendered or the action taken in a proceeding before the trial judge without a jury, and such judgment or action is not a determination of guilt, and the evidence does not preponderate against the finding of the trial judge

We determine that this case meets the criteria of the above-quoted rule and, therefore, we grant the State's motion filed under Rule 20 and we affirm the judgment of the trial court.

JERRY L. SMITH, JUDGE